

## **REMARKS**

The Office Action mailed June 5, 2009, has been received and carefully noted. The above amendments and the following remarks are being submitted as a full and complete response thereto.

By this amendment, claims 1, 14, and 15 are amended, and claims 5 and 9-12 are cancelled. Claims 6-8 and 13 are withdrawn from further consideration in this application. Claim 2 was previously cancelled. Thus, claims 1, 3, 4, 6-8, 13, 14, and 15 are pending in this application. Support for the amendments may be found in the specification as originally filed. Amendments to the claims do not introduce new matter, since they contain only limitations that were already disclosed by the original application. Applicant respectfully requests reconsideration and withdrawal of the rejections.

### **Claim Rejections - 35 U.S.C. §103**

Claims 1, 3-5, 9-12, 14, and 15 are rejected under 35 U.S.C. §103(a) as being unpatentable over admitted prior art (Background of the invention) in view of Trebbi (U.S. Patent No. 6,327,835, hereinafter "Trebbi"). Applicant respectfully traverses this rejection.

The Examiner asserts that "Trebbi discloses...the use of detecting/checking means to check out quantity of material filled into capsules body by having a volume transducer element for measuring a volume/height of the quantities before they are inserted into the capsule bodies...".

Trebbi fails to teach, however, that the “volume transducer element *is* configured to generate a signal representative of a height of the pharmaceutical material placed in a dosing chamber, said signal being elaborated by a control and processing unit configured to calculate a volume of the quantity of pharmaceutical material into the dosing chamber and to be inserted into the capsule bodies”, as recited in amended claim 1.

Indeed Trebbi discloses that “The volumetric metering devices terminate at the bottom in an associated hollow punch 18 inside which there is movably arranged a small piston 19 which is integral with an upper stem having an enlarged head 20, this stem being axially slidable in the body of the said metering device, being pushed upwards by a spring 21 and being retained inside the said body of the metering device by a small pin 22 which is fixed transversely to the said head 20, and which co-operates with an eyelet of suitable length 23 provided longitudinally in the same body of the metering device. The eyelet 23 generally has a helical configuration so as to ensure that when the piston 19 travels axially inside the hollow punch, the latter performs simultaneously a slight rotation which prevents the said piston from sticking to the metered amount of product isolated inside the hollow punch both during pressing of the metered amount and during the subsequent stage of discharging of the metered amount itself. The distance of the piston 19 from the lower edge of the hollow punch 18 defines the volume of this hollow punch with available for filling with the product, and determines the consequent volume and the weight of the metered amount of the said product to be formed. This volume is defined by the contact of the pins 22 of the metering devices with a plate 24 which is mounted on the axis of the carousel with the

possibility of heightwise adjustment by means of a screw/female thread adjusting system 25 of the known type.” (Emphasis added).

Therefore, Trebbi discloses a volumetric metering device in which the volume is already known by mechanical interaction between pins 22 and plate 24 which present preset geometries.

In other words, Trebbi fails to teach that the volume transducer element is configured to generate a signal representative of a height of the pharmaceutical material placed in a dosing chamber (since such first data is preset in Trebbi disclosure and it is not generated by the volume transducer element) and fails to teach that the control and processing unit is configured to elaborate the signal and to calculate a volume of the quantity of pharmaceutical material (since such second data, namely the volume, is preset in Trebbi disclosure due to the presetting of the first data, namely due to the preset geometries of the pins 22 and plate 24).

By contrast, Trebbi teaches to generate, elaborate and calculate other signals and data; in particular Trebbi teaches to provide “pressing thrusters 6 [are] provided with respective force transducers which are able to emit an electrical signal having a value proportional to the thrust which these thrusters exert on the metered amount of product isolated in the hollow punch of the metering devices, so that, for the same stroke of the thrusters, with the transducers in question it is possible to detect a parameter relating to the resistance which the thrusters encounter during pressing and therefore proportional to the density of the product processed and to the volume of the metered amount of product pressed and therefore to mass or the weight of the metered amount itself... The electrical signals produced by the force transducers combined with

the thrusters 6 and 7 are amplified by units 44, 44', are then converted into digital form by units 45, 45' and finally are sent to the processor 39 which processes them and compares them with predetermined minimum and maximum threshold values and generates the resultant signals." (emphasis added).

In view of the above, it is clear that amended claim 1 is patentable over admitted prior art in view of Trebbi.

Unpatentability of claims 3, 4, 14, and 15 is based on the fact that Trebbi anticipates claim 1 (from which these claims depend).

Since as explained above, amended claim 1 is patentable over Trebbi, the Examiner cannot object to claims 3, 4, 14, and 15 under 35 U.S.C. §103(a).

Accordingly, claims 3, 4, 14, and 15 are allowable at least due to their dependence from amended claim 1.

In view of the above, reconsideration and allowance of the present application is respectfully requested.

### Conclusion

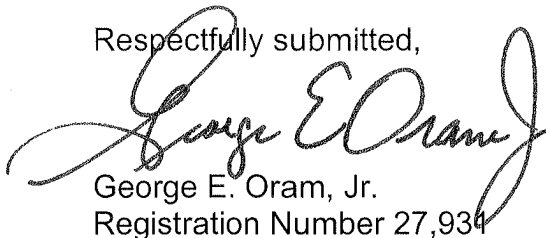
All matters having been addressed above and in view of the pending claims and remarks, Applicant respectfully requests the entry of this Amendment, the Examiner's reconsideration of the application, and the timely allowance of the pending claims.

Applicants' counsel remains ready to assist the Examiner in any way to facilitate and expedite the prosecution of this application.

Applicant respectfully submits that this application is in condition for allowance and such action is earnestly solicited. If the Examiner believes that anything further is desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below to schedule a personal or telephone interview to discuss any remaining issues.

In the event that this paper is not being timely filed, the Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension, together with any additional fees that may be due with respect to this paper, may be charged to Counsel's Deposit Account Number 01-2300, referencing Docket Number 023349-00315.

Respectfully submitted,



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